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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,227	07/30/2003	Thomas M. DiMauro	3518.1015-000	8291

21005

7590

07/06/2009

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EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 07/06/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Defective Appeal Brief

The Appeal Brief filed on 5 December 2005 was remanded from the Board of Patent Appeals with the following communication:

This application was electronically received by the Board of Patent Appeals and Interferences on August 18, 2008. On November 25, 2008, a Docketing Notice was mailed, and Appeal No. 2009-001906 was assigned. A review of the application has revealed that the application was not ready for an appeal. Accordingly, the application is herewith being remanded to the Examiner. The matter requiring attention is identified below.

Grounds of Rejection: *Ex parte Lemoine*

A review of the file finds that both Appellants and the Examiner are of the mistaken belief that all individual claims in an application must be twice rejected to be appealable. However, in *Ex parte Lemoine*, the Board of Patent Appeals and Interferences held that when an *application* is twice rejected *all* claims become appealable. See 46 USPQ2d 1420 (BPAI 1994); MPEP § 1204. Clarification of the record is required.

Therefore, the application is remanded to the Examiner to hold Appellants' Appeal Brief, filed December 5, 2007, defective. The Examiner is to vacate the Examiner's Answer mailed March 10, 2008.

The Appellants are to file a substitute Appeal Brief which clearly addresses all grounds of rejection to be reviewed on appeal as set forth in the Office Action mailed June 27, 2006. The Examiner is to generate a new Examiner's Answer which addresses all contested issues of patentability raised in Appellants' substitute Appeal Brief.

CONCLUSION

Accordingly, it is

ORDERED that the application is remanded to the Examiner:

- 1) to hold the Appeal Brief filed December 5, 2007, defective;
- 2) to vacate the Examiner's Answer mailed March 10, 2008;
- 3) for Appellants to file a substitute Appeal Brief for the reasons set forth above;
- 4) to consider Appellants' substitute Appeal Brief;
- 5) to generate a new Examiner's Answer for the reasons set forth above; and

6) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

Thus, the Examiner's Answer of 10 March 2008 is hereby vacated.

Applicant is given ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing date of this communication to correct the deficiency(ies).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHULAMITH H. SHAFER whose telephone number is (571)272-3332. The examiner can normally be reached on Monday through Friday, 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Manjunath Rao, Ph.D. can be reached on 571-272-0939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. H. S./

Examiner, Art Unit 1647

/Manjunath N. Rao /

Supervisory Patent Examiner, Art Unit 1647